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BANGALORE, THURSDAY, AUGUST 21, 1919.

PART II.

OFFICIAL PAPERS.

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

Sale of Burma Rice.

READ—

Paragraph 2 of Government Order No. G. 28099-112—P. P. 134-18-622, dated 18th June 1919, directing that the arrangements to sell Burma rice at the Government Depôts be continued till the end of August 1919.

2. Letter No. A. 39-54-2, dated 4th August 1919, from the Food Controller in Mysore, regarding the continuance of the arrangements till the end of December 1919.

ORDER NO. G. 3304-17—P. P. 6-19-35, DATED 9TH AUGUST 1919.

Government are pleased to direct that the arrangements to sell Burma rice at the Government Depôts be continued till the end of December 1919.

C. S. BALASUNDARAM IYER
Chief Secretary to Government.

To—The Revenue Commissioner in Mysore.
The Inspector-General of Police in Mysore.
The Food Controller and Director of Civil Supplies in Mysore.
The Presidents of the Bangalore and Mysore City Municipalities.
The Deputy Commissioners of Districts.
The Comptroller to Government.
PRESS TABLE.

Appeal Against the Orders of the Revenue Commissioner.

Appeal No. 10 of 18-19.

Appellant.	*Vs.*	*Respondents.*
Muthamma, widow of the late Chik Hanumanthiah, Toddy Contractor, Dodballapur.		(1) Rudraiya. (2) Gubbaiya and (3) Lakshmidevamma of Arodi Village, Dodballapur Taluk.

Subject.

Appeal against the order of the Revenue Commissioner regarding the delay in the handing over to the appellant of 14½ Vrittis of Arodi Village purchased by her husband the late Hanumanthiah, toddy contractor, Dodballapur, in a Revenue Sale.

ORDER NO. 2110 L. R.—178-18-7, DATED 8TH AUGUST 1919.

There is no doubt or dispute as to the essential facts connected with this appeal. The Jodi Village of Arodi in the Dodballapur Taluk comprises 69 *vrittis* with an aggregate area of 3,891 acres 29 guntas and a survey assessment of Rs. 2,194-4-8; the Jodi payable to Government being Rs. 1,339. The Jodi amount having fallen into arrears, an order of forfeiture was passed by the Sub-Division Officer on the 31st March 1913 in the usual terms; that is to say, declaring the defaulters' holding to have been forfeited to Government under Section 54 of the Mysore Land Revenue Code, and directing under Section 159 that the said holding be sold after due proclamation. The sale proclamation (*vide Mysore Gazette* Part II, 30th July 1914) contained a detailed description of the "immovable property" to be sold, its classification, extent, assessment, estimated value, the annual jodi payable, and the amount of arrears; it also contained among other things a clause stating that "purchasers, having completed the payment of the purchase money, will, as soon as the sale has been confirmed by the Deputy Commissioner, be placed in immediate possession." The sale was held on the 29th August 1914, and the properties comprised in 14½ *vrittis* were knocked down to Chikka Hanumanthiah (husband of the present appellant Muthamma) for Rs. 6,000. There being no objection to the sale, which was regular in all respects, the same was confirmed on the 12th October 1914.

2. The auction purchaser applied to the Amildar to be placed in possession; but this was resisted by the present respondents on the ground that they were *Kadim* tenants and that the purchaser could not oust them but only collect the customary rent. The Sub-Division Officer, before whom the matter went, disallowed the contention of the alleged *Kadim* tenants, and directed that the purchaser should be put in possession of the property purchased.

3. The tenants appealed to the Deputy Commissioner, who, after hearing parties, decided in favour of the tenants. The following extract from the Deputy Commissioner's order indicates the view upon which he proceeded:—

"The real point at issue is whether the burden of proving that they are Kadim tenants lies on the Kadim tenants, or whether it is Chikka Muthamma who has to prove that they are not Kadim tenants. Muthamma is the new comer, and it seems to me that it is up to her to prove that these people have no right to a tenancy of the land.

"All that the Taluk Revenue Authorities can do is to declare that Chikka Muthamma is the new owner of the lands in the usual way that is allotted for doing such acts.

"They are not competent to say what is the relationship between Muthamma and the Kadim tenants. This should be settled in a Civil Court if there is any dispute in the matter. By announcing that Muthamma is the owner of the land, the Revenue authorities have done all that need be done by them, and they should not take any further action in the matter.

"If however it should appear that there is likely to be a breach of the peace, action should at once be taken under Section 145 of the Criminal Procedure Code".

4. From the above order Muthamma appealed to the Revenue Commissioner, who, however, being of opinion that the Deputy Commissioner's order was a proper one, declined to interfere and dismissed the appeal.

5. She has now preferred this further appeal to Government upon the grounds, mainly, that the burden of proving that by the sale in her favour the possession of the lands sold did not pass to her, but merely the right to collect rent from the tenants, lies on those who set up the right of Kadim tenancy; and that what the appellant acquired under the sale was not a mere right to a declaration of ownership, but all the 14½ vrittis together with the right of possession thereto.

6. It may be observed at once that the view expressed by the Deputy Commissioner as to where the burden of proof lies in a case like the present, seems to be based on a clear misconception of the law. The Mysore Land Revenue Code does not raise any general presumption in favour of a tenancy being permanent or *Kadim*. Immemorial possession, or

the payment of uniform rent at rates equivalent to those of land revenue assessment, as the case may be, should be established before any such presumption can arise; in the present case no attempt has been made by the respondents to prove either of these incidents, or any other circumstance from which the nature of the alleged tenancy may be inferred. The Deputy Commissioner's dictum that the purchaser as the new comer should prove that the respondents have no right to a Kadim tenancy, is an extraordinary perversion of the true general principle, namely, that the proof of any particular fact lies on the party who alleges it, particularly so when it is a fact specially within his knowledge." It has accordingly been held in several cases that a person who, in answer to a suit for ejectment, alleges the permanency of the tenure, must make out his allegation affirmatively, or he will fail.

7. *Apart from* the question of burden of proof, a plea of *Kadim* tenancy even if satisfactorily established will not ordinarily avail the tenant anything; unless, possibly, he is in a position to go further and prove that that tenancy was in existence before the rights of Government to rent or land revenue over the lands comprised in the holding were alienated to the superior holder. If he cannot prove this last circumstance (and it has not been so much as alleged in the present case), the forfeiture and sale of the alienated holding under sections 54 and 159 of the Land Revenue Code entail the consequence that the holding becomes "freed from all *tenures*, rights, incumbrances and equities theretofore created by the holder or any of his predecessors in title or in anywise subsisting as against such holder." Section 54 (as amended by Regulation VII of 1916) gives the Deputy Commissioner power to "direct otherwise" in which case the tenures, etc., subsisting will remain; but the records do not show that any such direction was given in the present case.

8. The Deputy Commissioner refers to the terms of Section 169 to suggest that an inam village forfeited on account of arrears of revenue due to Government rests in Government "without prejudice to the rights of the occupants of the soil," and concludes that the purchaser will only succeed to the position of the inamdar. This is clearly erroneous; for Section 169 is not applicable to a case of forfeiture at all but is one of a group of sections, dealing with the right of Government to *attach and manage* a village in those cases in which the adoption of any of the processes previously specified (including forfeiture is deemed to be) inexpedient.

9. The Code has made ample provision to safeguard the interests of tenants and other persons interested, against forefeiture by reason of the registered holder's default in the payment of land revenue. Under Section 77 they are at liberty to pay the sum due, and obtain the aid of the Deputy Commissioner to recover the proportional amounts payable by other persons and under Rule 40 of the Land Revenue Rules they may cause their names and interest to be entered in the special register, in which case they become entitled to notice before the holding is declared forfeited. If they neglect to take these precautions, and the entire holding is forfeited, they have only themselves to blame for the result.

10. The law makes a clear distinction in the matter of the rights that pass under a sale, between the holding in respect of which an arrear of land revenue is due and other immovable property of the defaulter. So far as the latter is concerned, only the right title and interest of the defaulter can be sold; but as regards the former, the arrear is a paramount charge on the holding and every part thereof, and its sale after forfeiture (unless otherwise declared) extinguishes all tenures, etc., subsisting as against the holder. Were it not for such a provision, the interests of the State in the matter of the realisation of the land revenue would suffer materially; for one thing, all kinds of fictitious rights and interest would be set up against a forfeiture, and for another thing, where sales are made subject to the unknown or undisclosed rights of third persons, purchasers will not come forward readily to buy.

11. In the case under appeal, it was not merely the defaulters' right to recover rent or land revenue from the tenants or co-holders that was affected by the forfeiture and sale but the entire holding or land comprised within the 14½ vrittis. The sale to appellant having been confirmed, it was incumbent upon the Deputy Commissioner, under Section 187, *to put her into possession* of the land in question, that is to say, actual possession or such other possession as the nature of the case might admit,—ejecting, if need be, the respondents or any others who offered obstruction.

In the circumstances, the appeal will be allowed, the orders of the Deputy Commissioner and the Revenue Commissioner set aside, and an order passed directing that the appellant be put in possession of the 14½ vrittis purchased by her upon application made in this behalf.

B. RAMASWAMAIYA,
Secretary to Government,
Revenue Department.